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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

U.S. BANK, NA, Successor Trustee to
Bank of America, NA, Successor in
interest to LaSalle Bank NA, as
Trustee, on behalf of The Holders of
the Washington Mutual Mortgage Pass-
Through Certificates, WMALT Series
2007-OA3,

Plaintiff,

v.

DAVID ABADI, et al.,

Defendants.

Case No. CV 18-05898-PSG (RAOx)

**ORDER REMANDING ACTION
AND DENYING REQUEST TO
PROCEED IN FORMA PAUPERIS**

I.

FACTUAL BACKGROUND

Plaintiff U.S. Bank, NA ("Plaintiff") filed an unlawful detainer action in Ventura County Superior Court against Defendants David Abadi, Ofra Abadi, Nestor Guevara, Maria Guevara, and Does 1 to 6 ("Defendants"), on or about October 11, 2017. Notice of Removal ("Removal") and Attached Complaint ("Compl."), Dkt. No. 1. Defendants are allegedly occupants of real property located in Bell Canyon, California ("the property"). Compl. ¶¶ 1, 5. Plaintiff is the owner of the property. *Id.* ¶ 5. Plaintiff filed the unlawful detainer action

1 requesting restitution of the property and damages for the reasonable rental value of
2 the use and occupancy of the property. *Id.* at 3.

3 Defendant Ramon Valadez filed a Notice of Removal on July 6, 2018,
4 invoking the Court’s federal question jurisdiction and diversity jurisdiction.
5 Removal at 2-9. Defendant Valadez also filed a Request to Proceed *In Forma*
6 *Pauperis*. Dkt. No. 3.

7 8 II. 9 DISCUSSION

10 Federal courts are courts of limited jurisdiction, having subject matter
11 jurisdiction only over matters authorized by the Constitution and statute. *See, e.g.,*
12 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed.
13 2d 391 (1994). It is this Court’s duty always to examine its own subject matter
14 jurisdiction, *see Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235, 163 L.
15 Ed. 2d 1097 (2006), and the Court may remand a case summarily if there is an
16 obvious jurisdictional issue. *Cf. Scholastic Entm’t, Inc. v. Fox Entm’t Grp., Inc.*,
17 336 F.3d 982, 985 (9th Cir. 2003) (“While a party is entitled to notice and an
18 opportunity to respond when a court contemplates dismissing a claim on the merits,
19 it is not so when the dismissal is for lack of subject matter jurisdiction.”) (omitting
20 internal citations). A defendant attempting to remove an action from state to
21 federal court bears the burden of proving that jurisdiction exists. *See Scott v.*
22 *Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). Further, a “strong presumption”
23 against removal jurisdiction exists. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th
24 Cir. 1992).

25 Defendant Valadez asserts that this Court has subject matter jurisdiction
26 pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. Removal at 1-2. Section 1441
27 provides, in relevant part, that a defendant may remove to federal court a civil
28 action in state court of which the federal court has original jurisdiction. *See* 28

1 U.S.C. § 1441(a). Section 1331 provides that federal “district courts shall have
2 original jurisdiction of all civil actions arising under the Constitution, laws, or
3 treaties of the United States.” *See id.* § 1331. Section 1446 provides the procedure
4 for removal of civil actions. *See id.* § 1446.

5 Here, the Court’s review of the Notice of Removal and attached Complaint
6 makes clear that this Court does not have federal question jurisdiction over the
7 instant matter under 28 U.S.C. § 1331. First, there is no federal question apparent
8 from the face of the Complaint, which appears to allege only a simple unlawful
9 detainer cause of action. *See Wescom Credit Union v. Dudley*, No. CV 10-8203
10 GAF (SSx), 2010 WL 4916578, at *2 (C. D. Cal. Nov. 22, 2010) (“An unlawful
11 detainer action does not arise under federal law.”) (citation omitted); *IndyMac*
12 *Federal Bank, F.S.B. v. Ocampo*, No. EDCV 09-2337-PA (DTBx), 2010 WL
13 234828, at *2 (C.D.Cal. Jan. 13, 2010) (remanding an action to state court for lack
14 of subject matter jurisdiction where plaintiff’s complaint contained only an
15 unlawful detainer claim).

16 Additionally, to the extent Defendant Valadez attempts to base federal
17 question jurisdiction on a defense related to Washington Mutual’s bankruptcy
18 proceedings, *see* Removal at 8-9, a defense cannot provide a basis for federal
19 question jurisdiction. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 393, 107 S.
20 Ct. 2425, 2430, 96 L. Ed. 318 (1987) (“[I]t is now settled law that a case may *not* be
21 removed to federal court on the basis of a federal defense . . . even if the defense is
22 anticipated in the plaintiff’s complaint, and even if both parties concede that the
23 federal defense is the only question truly at issue.”). Thus, to the extent Defendant
24 Valadez’s defenses to the unlawful detainer action are based on alleged violations
25 of federal law, those defenses do not provide a basis for federal question
26 jurisdiction. *See id.* Because Plaintiff’s complaint does not present a federal
27 question, either on its face or as artfully pled, the Court lacks jurisdiction under 28

1 U.S.C. § 1331.

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3 Second, there is no merit to Defendant Valadez's contention that diversity
4 jurisdiction exists. *See* Removal at 2. Section 1332(a) provides, in relevant part,
5 that federal "district courts shall have original jurisdiction of all civil actions where
6 the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest
7 and costs, and is between . . . citizens of different states." 28 U.S.C. § 1332(a).
8 Defendant Valadez claims that the amount in controversy exceeds \$1,359,000.00.
9 *See* Removal at 2. The state court documents, however, provide that the amount
10 demanded does not exceed \$10,000. Compl. at 1. Where the amount of damages is
11 unclear, the defendant bears the burden of "actually proving" that the amount in
12 controversy exceeds \$75,000. *Gaus*, 980 F.2d at 566-67. Defendant Valadez has
13 offered no facts to support his statement that the amount in controversy exceeds
14 \$1,359,000.00.

15 Finally, Defendant Valadez's removal appears to be untimely. A notice of
16 removal must be filed within 30 days after receipt by the defendant, through service
17 or otherwise, of a copy of the initial pleading. 28 U.S.C. § 1446. Here, Defendant
18 Valadez contends that he has not been properly served. Removal at 2. However,
19 Defendant Valadez provides that he filed an answer on or about November 3, 2017.
20 *See* Removal at 6 & Ex. J. Even assuming Defendant Valadez was not served until
21 the day he filed his answer, the notice of removal was filed over eight months after
22 the date of filing of the answer. The notice of removal was thus untimely by over
23 seven months.¹

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25 ¹ The Court notes that Defendant Valadez previously attempted to remove this case to
26 federal court on similar grounds, but the case was remanded. *See* Case No. 2:18-cv-
27 4859-MWF-Ex (C.D. Cal., filed June 1, 2018). Additionally, Defendant Nestor
28 Guevara has twice attempted to remove the case to federal court, but in both instances,
the case was remanded to state court. *See* Case No. 2:17-cv-9106-DMG-AGRx (C.D.
Cal., filed December 20, 2017); Case No. 2:18-cv-1303-PSG-JEMx (C.D. Cal., filed

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3 **III.**
4 **CONCLUSION**

5 Accordingly, IT IS ORDERED that this case is REMANDED to the Superior
6 Court of California, County of Ventura, forthwith.

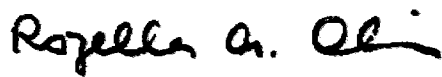
7 IT IS FURTHER ORDERED that Defendant's Request to Proceed *In Forma*
8 *Pauperis* is DENIED as moot.

9 IT IS SO ORDERED.

10 DATED: 7/12/18

11 
12 PHILIP S. GUTIERREZ
13 UNITED STATES DISTRICT JUDGE

14 Presented by:

15 
16 ROZELLA A. OLIVER
17 UNITED STATES MAGISTRATE JUDGE

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February 16, 2018).